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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2311 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

UNAI GRAM PANCHAYAT

Versus

PK LAHERI OR HIS SUCCESSOR IN OFFICE

Appearance:

MR JAYANT PATEL for Petitioner
MR. KODEKAR, A.G.P. for Respondent No. 1
MR DR DHIMAR for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/06/1999

C.A.V. JUDGEMENT

The petitioner through this writ petition has challenged the validity of the order dated 18.3.1999 Annexure-A to the writ petition passed by the Additional Chief Secretary and has prayed for quashing of the aforesaid order. On 1.4.1999 this court issued notice to the respondents to show cause why the writ petition be

not admitted, heard and finally disposed of at the admission stage.

2. Learned counsel for the respondents appeared at the admission stage and with the consent of the learned counsel for the parties, this writ petition is proposed to be finally disposed of at the admission stage.

3. The brief facts are that the petitioner gram panchayat owns land in village Unai. Land admeasuring 125 ft. by 150 ft was given to the respondent No. 4 for running a mobile cinema on daily rent of Rs. 25/-. Several conditions were imposed under the agreement. There was provision for renewal of the agreement. The first agreement was for the period 1.10.1990 to 1.10.1993. By resolution dated 16.7.1993 the period was extended from 1.10.1993 to 30.9.1996 with enhancement of daily rent to Rs. 40/-. This period expired on 30.9.1996. Thereafter, the gram panchayat resolved not to renew the period and it was ultimately decided that the land in question be vacated by respondent No. 4. Respondent No. 4 was communicated of this intention of the petitioner. Respondent No. 4 however secretly preferred an appeal before Taluka Panchayat against resolution dated 10.10.1996 passed by the petitioner gram panchayat and vide order dated 7.11.1996 the Taluka Panchayat gave instruction not to take further steps in the matter. This order was not served on the petitioner. The petitioner however came to know this order in appeal and the said appeal is still pending before the Taluka Panchayat. This is one set of litigation.

The second set of litigation started when respondent No. 4 filed Civil Suit No. 13 of 1998 in the court of Civil Judge (J.D.), Vansda and obtained order to maintain status quo meaning thereby that respondent No. 4 was not to be dispossessed from the same land by the petitioner. That litigation is also pending.

The third set of litigation and dispute arose when the Mamlatdar refused to renew the licence of respondent No. 4 for running touring cinema under the provisions of Bombay Cinema Rules. The Mamlatdar, respondent No. 3, by his order dated 7.11.1998 rejected the application of respondent No. 4 for renewal of the licence for running the touring talkies. As such the touring cinema was closed. Respondent No. 4 thereafter filed an appeal before the State Government on 5.12.1998 which was heard and dismissed by the Deputy Secretary, on behalf of the State Government. Thereafter, review application was moved by respondent No. 4. This review

application was allowed under the impugned order. The order of the Mamlatdar and the order passed in appeal were set aside. The Mamlatdar was directed to grant licence to respondent No. 4 for running touring talkies from 1.4.1999 to 30.6.1999. Further direction was given that respondent No. 4, namely, Gandhi Touring Talkies to reapply in this matter for the licence in July, 1999 to the Mamlatdar who will take decision after reconsideration of the matter as per the decision of appeal pending in the court till that time.

4. In the writ petition this order has been challenged on several grounds. The first ground is that the impugned order is without jurisdiction. The second ground is that the order is beyond the scope of Section 8(C) of Bombay Cinemas (Regulations) Act, 1953. The third ground is that all the affected parties including the petitioner were not heard before the impugned order was passed, hence it is illegal and invalid. Another ground of attack is that the order was passed without following mandatory procedure and suffers from vice of non-application of mind. Another ground of attack is that the direction to grant licence by the State Government from 1.4.1999 to 30.6.1999 is beyond jurisdiction inasmuch as it was not even the subject matter of review nor it was subject matter of appeal before the State Government. The last ground is that the review application was time barred inasmuch as it was not filed within 30 days from the date of the appellate order, namely, 22.1.1999.

5. Having heard the learned counsel for the parties at length, I am of the view that none of the grounds raised in the writ petition can successfully be accepted for quashing the impugned order. It may be mentioned that the matter of grant of licence for running touring cinema is a matter between Mamlatdar and the State Government on one hand and person applying for licence for running touring cinema on the other hand. If licence is granted or refused, the person aggrieved will be the person who has applied for grant of licence and not any other person. If that is so, then the order passed by the Mamlatdar or by the State Government in appeal or by the State Government in review cannot be successfully challenged and attacked by the petitioner who is gram panchayat and has nothing to do with the grant or refusal of licence. A person remotely interested in refusal of licence to run cinema cannot be said to be a person aggrieved within the scope of Section 8(A) of the Bombay Cinema Rules or within the ambit of Section 8(B) or 8(C) of the aforesaid Rules. It is true that two other

litigations are pending at the instance of respondent No. 4. In one litigation he has challenged the resolution of the gram panchayat and the matter is pending. In the other litigation respondent No. 4 has filed Civil Suit and obtained injunction order in the nature of status quo protecting his illegal dispossession from the land where touring cinema is being run. In those litigations the petitioner may be interested, affected or aggrieved party but not in the litigation where the licence to run touring cinema was granted or refused. If the petitioner cannot be said to be an aggrieved person within the meaning of Section 8(A) and Section 8(C) of the Rules, he cannot be permitted to challenge the order passed by the State Government in exercise of powers of review under Section 8(C) of the Rules.

6. So far as the plea of jurisdiction is concerned it has no substance. Review application has to be entertained and decided by the State Government under Section 8(C) of the Rules on the motion of a person who considers himself to be aggrieved by the order of the State Government under Section 8(A) or under Section 8(B) of the Rules. It is a matter of academic exercise only whether remedy of appeal under Section 8(A) is an alternative to the remedy of revision under Section 8(B) of the Rules. It is however clear from the material on record that initially appeal was filed before the State Government by the respondent No. 4 against order of respondent No. 3. That appeal was dismissed. Consequently, review application could lie under Section 8(C) on the motion of respondent No. 4 inasmuch as he was a person aggrieved by an order of the State Government dismissing his appeal against the order of Mamatdar. The State Government had therefore jurisdiction to entertain the review application. It was actually review application which is indicated from the impugned order wherein it is mentioned that application for reconsideration of the matter was made by the applicant, namely, respondent No. 4 of this writ petition. No other authority had jurisdiction to entertain review application. Consequently, the impugned order cannot be said to be without jurisdiction hence this attack has no substance.

7. The next contention has been that the impugned order is beyond the scope of Section 8(C) inasmuch as the grounds for review did not exist as enumerated in Section 8(C) of the Rules. If the petitioner is not entitled to challenge the impugned order, he cannot be heard to say that the impugned order is beyond the scope of review as contemplated under Section 8(C) of the Rules. However,

it cannot be said that there was no mistake or error apparent on the face of the record. The Mamlatdar as well as the appellate authority, namely, the State Government were impressed by the fact that because respondent No. 4 had no authority to occupy the land from the gram panchayat after its decision not to renew the agreement, licence to run the cinema could not be granted. Licence to run the cinema had no direct bearing with the right to occupy the land more particularly when Civil litigation was pending and the order to maintain status quo was passed by the Civil Court. This order to maintain status quo means that respondent No. 4 could not be dispossessed by the petitioner and if this was so then there was no difficulty before the Mamlatdar or the State Government in granting licence to the petitioner to run the touring talkies. This was the error apparent on the face of the record inasmuch as the factum of civil litigation and the order passed by the competent civil court to maintain status quo was brought on record. On these facts, power of review could be exercised. Consequently, it cannot be said that the impugned order is beyond the scope of Section 8(C) of the Rules.

8. Another contention has been that the petitioner was not heard by the Additional Chief Secretary before the impugned order was passed. As observed earlier even under Section 8(C) of the Rules, the review application can be moved only by a person who considers himself to be aggrieved by an order of the State Government under Section 8(A) or Under Section 8(B) of the Rules. Obviously the order was passed by the State Government under Section 8(A). Consequently, review could be moved by respondent No. 4 inasmuch as he was the aggrieved person because his prayer for granting licence to run the touring cinema was refused. No obligation was imposed upon the State Government to issue notice of review application to the person owning the land where touring cinema was operating. Under Section 8(C) no notice was required to be issued to the petitioner and if the petitioner was not heard, the order does not become illegal or against the principle of natural justice.

9. I also do not find any substance in the contention that the impugned order was passed without following mandatory provisions of law. The requisite material was considered by the State Government while deciding the review application. If the Additional Chief Secretary found that no enquiry was needed in the matter, he could have decided the review application on the material placed before him. The impugned order is therefore not against the established procedure for deciding the review

application.

10. I again do not find any force in the contention that the impugned order is beyond the subject matter of review. The contention has been that grant of temporary licence for the period between 1.4.1999 and 30.6.1999 was not the subject matter before the Mamlatdar or before the State Government during the appeal hence such order could not be passed on review application. Section 8(C) clearly provides that the State Government shall after making such enquiry, as it thinks fit, pass such orders as it considers necessary in the circumstances of the case. This provision therefore authorises the State Government while dealing with the review application to pass such order as it considers necessary in the circumstances of the case. The Additional Chief Secretary while deciding the review application in the first place directed the applicant, who is respondent No. 4 of this petition, to apply again for licence in July 1999 to the Mamlatdar who will take decision after reconsideration of the matter as per the decision of the appeal pending in the court. To protect the interest of respondent No. 4, the Additional Chief Secretary further directed the Mamlatdar to grant licence to respondent No. 4 for running touring cinema from 1.4.1999 to 30.6.1999. These two orders cannot be said to be beyond the scope of Section 8(C) of the Rules.

11. The last contention has been that the review application was time barred hence it could not be allowed. This plea could not be taken by the petitioner for the first time in this writ petition. The plea of bar of limitation was not agitated before the Additional Chief Secretary nor the Additional Chief Secretary considered and found that the review application was time barred. If he proceeded to hear and decide the review application on merits, it can safely be inferred that delay, if any, was liberally condoned and it was impliedly condoned by the reviewing authority. On this ground also the impugned order granting temporary licence to run touring cinema was not illegal. No other contention was raised.

For the reasons stated above, I do not find any merit in this writ petition which is hereby dismissed. No order as to costs.

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